

The 1895 Road Law (Public Highways)

2600: All highways, roads, streets, alleys, courts, places and bridges laid out or erected by the public, or now traveled or used by the public, or if laid out and erected by others, dedicate or abandon to the public, or made such by petition of real property are PUBLIC HIGHWAYS.

A PUBLIC HIGHWAY, once established, must continue to be public highways until abandon by order of the county commissioners of the county in which they are situated,

1947 Road Law (repealed in 1959)

Identical to 1895 law with many roads "Grandfathered" in.

One of the main keys to very early dates of road establishment are surveyor notes for GLO Surveys conducted around the beginning of the 20th century. The surveyor will "CALL" the road where the section line he is running intersects the road. These surveys were often conducted prior to any land patents in the area. The land was still part of the public domain.

Other Road Designations

Post Roads: Established to ensure open travel to outlying post office. Mail Delivery in Montana was started in 1865.

RS 2477. Federal Designation of Roads on the Public Domain as Public Highways.

Montana Law provides for road to become public property or have public easements to protect them in different ways.

1. Petitioned by adjacent land owners for roads to become county roads thru a formal Process.

2. Court determination

3. Declaration by County Commissioners

4. Several others

5. Prescriptive Easement: When a road is found to have been used by others in a manner that amounted to open, notorious, continuous, hostile, exclusive and adverse use for a prescriptive period (presently 5 years) then a prescriptive easement exists on the road and those who have used the road in the afore mentioned manner may travel the road without landowner permission. Often, public prescriptive easements are created in this manner.

Once the above mention condition are met, the burden of proof shifts to the landowner. to prove the use of the road was permissive.